

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

WorldCom Petition for Waiver of the
Supplemental Order Clarification Regarding
UNE Combinations

CC Docket No. 96-98

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF NET2000 COMMUNICATIONS SERVICES, INC.

Net2000 Communications Services, Inc. ("Net2000"), by its attorneys, hereby submits its comments in the above captioned proceeding concerning WorldCom's Petition for Waiver of the Commission's Supplemental Order clarifying access to UNE combinations.¹ While Net2000 supports the factual premise of WorldCom's Petition, it fervently believes that a waiver of the Commission's rules is not necessary to permit conversion of a DS-1 circuit multiplexed on to DS-3 transport, because the Commission's rules already allow for the conversion in this situation if the DS-1/DS-3 customer connection carries a significant amount of local traffic. Additional traffic being carried on the otherwise unused portion of the DS-3 circuit does not render the entire arrangement ineligible for EEL. Instead of relying on the waiver process, the Commission should enforce its rules, through formal complaints, forfeiture proceedings, and a declaratory ruling in order to compel incumbent local exchange carriers ("ILECs") to stop impeding the use of EELs. In the alternative, the Commission should grant a waiver to allow for the conversion of

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-83 (2000) ("Supplemental Order Clarification").

a special access DS-1/DS-3 customer connection if that connection meets the local usage threshold and make any action automatically applicable to all CLECs, as WorldCom's inability to obtain an EEL is not unique to it.

I. INTRODUCTION

WorldCom has requested a waiver of the provisions of the *Supplemental Order Clarification* in order to "make it clear that WorldCom has a right under the Commission's unbundling rules" to convert exclusively local circuits leased under ILECs' special access tariffs to UNEs.² Specifically, WorldCom seeks a waiver of the following three provisions of the *Supplemental Order Clarification*: (1) the restriction on the commingling of loops or loop-transport combinations with tariffed special access services; (2) the customer usage restrictions, and (3) the collocation requirements.³ Additionally, WorldCom seeks a rebuttable presumption that any circuit that terminates at WorldCom's Class 5 local switches is a local circuit subject to the terms of its waiver request.⁴ Of particular importance to Net2000, is WorldCom's request for a waiver of the "commingling" requirement.

Net2000, like many other CLECs, has been working to incorporate the benefits of the EEL into its network architecture since before the *UNE Remand Order* was released in November of 1999. It repeatedly tried to engage Verizon in the process of conversion and has submitted several orders to convert special access circuits to the EEL. Recently, Verizon has stated that Net2000's requests to convert special access DS-1s to EEL will not be granted because the special access traffic at issue is multiplexed and aggregated onto a DS-3 transport facility that also carries additional traffic between the Verizon end office and Net2000's

² WorldCom Petition at 1.

³ Id.

switching facility. Because of Verizon's continued refusal to convert special access circuits to EELs, Net2000 has been denied use of unbundled network elements and continues to be denied access to customers and geographic areas that can be served economically only through an EEL.

Net2000 asserts that the Commission, through its three separate Orders on these issues, has clarified the rights of CLECs and the responsibilities of ILECs on the matter of converting special access tariffs to UNEs, and that no waiver of these rules is necessary to achieve the results that WorldCom, Net2000, and indeed many other CLECs seek under the Commission's rules.

II. WORLDCom's PROPOSAL DOES NOT INVOLVE PROHIBITED "COMMINGLING" OF SERVICES.

According to WorldCom's Petition, approximately 20,000 of its leased DS-1 circuits carry exclusively local switched traffic from WorldCom's local customers that ultimately terminate on WorldCom's Class 5 local switches. After the first central office on the ILEC network, these lines are connected to multiplexing and/or DS-3 lines, which may additionally carry dedicated access circuits that serve separate customers or are used for separate uses other than the local DS-1 circuits. Net2000 employs a similar architecture with its special access circuits. Net200 uses a leased DS-1 circuit from Net2000's customer to Verizon's central office facility as the local loop portion of the EEL. The second element of the EEL, the multiplexing, is accomplished by a 3:1 multiplexer at Verizon's central office, which converts the DS-1 circuit to a DS-3 circuit. The third and final element of the EEL is the inter-office transport component, which connects Verizon's central office facility to Net2000's facility via a DS-3 circuit. In addition to DS-1 loops from other Net2000 dedicated customers, a portion of this DS-3 circuit

⁴ Id.

may also be used to transport switched access traffic to and from Net2000 customers not served via dedicated facilities, for 911 access to emergency calling traffic, for 711 access to telecommunications relay services traffic for hearing-impaired customers, for operator services traffic, and/or for SS7 signaling traffic.

Neither WorldCom's DS-1 circuits nor Net2000's EEL configurations violate the Commission's rule on commingling of services. The Commission's prohibition on commingling clearly applies only to the *connection of* converted circuits to tariffed services and not to the provisioning of converted circuits over the same facilities that support tariffed services.⁵ Indeed, the circuits Net2000 has identified for conversion will be connected directly to Net2000's Class 5 switch and would satisfy the thresholds of safe harbor option 3 in the *Supplemental Order Clarification*. Recognizing that there would be no "commingling" of the converted DS1 circuits with tariffed special access services based on the Commission's definition, Verizon seems to suggest that the proscribed "commingling" is due to the fact that a portion of the DS3 facilities on which the converted DS1 circuits are transported would continue to be used for purchased tariffed services. The presence of non-converted DS-1 circuits on the DS-3 that carries converted circuits is simply irrelevant. Any other interpretation would render the Commission's option to convert multiplexed circuits at non-collocated arrangements meaningless, since a carrier would be forced to deploy a duplicate interoffice transport network dedicated solely to local traffic. WorldCom correctly points out that such an interpretation would require CLECs to operate segregated local and access transport networks, at prohibitive costs, while ILECs could

⁵ *Supplemental Order Clarification*, at ¶¶22(3), 28.

gain a significant cost advantage by managing their local and dedicated access traffic in the efficient manner denied to CLECs.⁶

Through bandwidth optimization, Net2000 continues to engineer, design and deploy an efficient network and reduce network costs in order provide cost-effective connections to existing and new customers. The aggregation of EEL-eligible special access circuits onto a high capacity DS-3 transport facility that also carries ancillary services should in no way bar the eligibility of the special access circuits for conversion to an EEL at UNE pricing under the FCC's *Supplemental Order Clarification*. This is not a case of proscribed "commingling". The Commission has pronounced no bar against conversion of special access circuits that are carried over high capacity transport with other types of circuits, such as 911 access to emergency calling. Rather, Net2000 is simply using the excess capacity on its DS-3 circuits to optimize the capacity and performance of its network and also to serve the critical needs of its customers.

Notably, Net2000 does not claim that the *entire* DS-3 transport facility should be converted to UNE pricing. Rather, it is Net2000's position that only the special access portion of the DS-3 transport facility constitutes the inter-office transport element of the EEL and, therefore, should be subject to conversion to UNE pricing. Net2000 will continue to pay applicable retail rates for those circuits on any DS-3 or other aggregate transport capacity that are not converted to EEL. Using a pricing and billing methodology known as "ratcheting," Verizon can charge different rates for dissimilar types of traffic sent over the same DS-3 circuit. Indeed, the DS-3 circuit itself is often a "virtual" circuit provisioned by Verizon over OC-48 or higher transport which is divided up for various users and traffic types.

⁶ WorldCom Petition at 12.

III. SELF-CERTIFICATION IS SUFFICIENT TO DETERMINE WHETHER A SPECIAL ACCESS CIRCUIT IS ELIGIBLE FOR CONVERSION.

Most importantly, WorldCom's petition can be resolved without having to adjudicate the factual dispute as to the exact composition of the traffic on the circuit in question. Although WorldCom seeks relief from the *Supplemental Order Clarification*'s safe harbor customer usage restrictions, no such relief is necessary, as the Commission has stated that an ILEC must immediately convert a circuit to an EEL once the CLEC self-certifies that the special access circuits in question meet one of the Commission's three qualifying criteria.⁷ WorldCom -- as has Net2000 -- has certified that all of the DS-1 circuits it wishes to convert to UNEs are dedicated to the exclusive carriage of local traffic, and therefore meet the Commission's "significant local usage" requirement.⁸ The ILECs to whom this certification was provided, therefore, are obligated to convert the circuit to an EEL without *any* further inquiry or delay.

Of course, the self-certification rule does not grant CLECs *carte blanche* to violate the Commission's safe harbors. If an ILEC disputes a CLECs certification of eligibility, it is entitled to audit the claim, but only *after* complying with the CLECs request to convert the special access circuits to UNEs.⁹ An ILEC's intentional refusal to abide by the self-certification standard is a *per se* violation of the Commission's rules and should not be tolerated as a continued excuse for not complying with CLECs' request for UNE conversions.

IV. CONCLUSION

It is unfortunate that WorldCom has had to resort to requesting a waiver of the Commission's rules in order to seek assurance of its ability and right to convert its leased special

⁷ *Supplemental Order Clarification* at ¶ 31.

⁸ WorldCom Petition at 15.

⁹ *Supplemental Order Clarification* at ¶ 31.

access circuits to UNEs. The Commission's rules are unambiguous in their granting of this right, and the ILECs' ongoing effort to twist the Commission's words in unreasonable ways in order to justify their refusal to comply with the rules should no longer be tolerated. This is not a situation that is unique to WorldCom or Net2000. Many CLECs face the same refusal by ILECs to comply with the Commission's rules. The facts illustrate the desperate need for the Commission to enforce its existing rules, not by a waiver of them, but by adjudicating complaints, assessing fines and issuing a Declaratory Ruling that spells out, in the strongest of terms, the obligation of ILECs to comply with the Commission's rules.¹⁰

Respectfully submitted,

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¹⁰ If the Commission does act by waiver, it should make any action automatically applicable to all CLECs, as WorldCom's inability to obtain an EEL is not unique to it.